

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

CIVIL ACTION NO. 3:17-cv-05806-RJB

STIPULATED JOINT MOTION TO
SEAL DOCUMENTS AND ORDER

NOTE ON MOTION CALENDAR:
May 8, 2019

I. INTRODUCTION

The Parties, by and through their respective counsel, and in compliance with Local Civil Rule (LCR) 5(g) and 10(g), submit this stipulated joint motion to permit Washington to file, under seal, documents that were marked by Defendant, The GEO Group, Inc. (GEO), “confidential” under the terms of the Stipulated Protective Order, ECF No. 70. The documents to be filed under seal are exemplary of financial documents GEO has produced to Washington in discovery, excerpts of deposition transcripts, and two expert reports that rely on GEO’s financial documents. The documents at issue are Exhibits A-H, J, and K to the Brenneke Declaration in Opposition to Defendant’s Motion for Limited Protective Order Regarding Deposition of Ryan Kimble. The Stipulated Protective Order entered in this matter, ECF No. 70, requires Washington to file under seal material GEO designates confidential, if GEO does not agree to withdraw the confidential designation or to redaction of the documents. Washington advised GEO that it intended to rely upon confidential documents for its response and requested

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that GEO reconsider the confidential designations. GEO denied Washington's request and Washington does not consider the documents amenable to redaction. The Parties now file this stipulated motion to ensure compliance with the Stipulated Protective Order.

The Court should authorize the filing of these documents under seal for purposes of the accompanying discovery motion—reserving the right of either party or the court to challenge or modify the underlying “confidentiality” designations at a later date—as the documents are not filed in support of any dispositive motions before the court, but as exemplars of non-privileged financial documents produced by GEO, filed in support of Washington's response to GEO's motion for a protective order related to the deposition of Ryan Kimble as relates to GEO's financial documents and information, ECF No. 190. Filing these documents under seal complies with Washington's obligations under the Stipulated Protective Order, and protects GEO's contention at the core of its motion for a protective order that its confidential financial information is protected from disclosure, and supports the Court's ability to make informed decisions about the parties' arguments.

II. AUTHORITY

This motion is brought in accordance with Federal Rule of Civil Procedure 26(c), LCR 26(c), LCR 5(g), LCR 10(g), and the terms of the Stipulated Protective Order, ECF 70.

Rule 26(c) provides for the entry of “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.” Pursuant to LCR 26(c), the Stipulated Protective Order protects specific categories of confidential, proprietary, or private information, but “does not presumptively entitle the parties to file confidential information under seal.” LCR 26(c)(2); ECF No. 70 at 2, ¶ 1.

GEO designated the documents at issue—Exhibits A-H, J, and K to the Brenneke Declaration—as “Confidential” and purportedly falling within the following categories of “Confidential” documents covered by the Stipulated Protective Order:

3. Business financial information, including non-public tax information, contracts, expenditure reports, and internal records of payment or cost summaries that incorporate a) staffing information and compensation; b) security information; or c) proprietary and competitive client and vendor information;

...
8. Internal GEO communications or reports regarding the administration of the Northwest Detention Center ... including internal audits, and internal GEO communications containing proprietary and competitive staffing information or client and vendor information;

...
11. Employee rosters and staffing plans.

ECF No. 70 at 2.

GEO'S STATEMENT RE LCR 5(g)(3)(B)

GEO designated certain documents as "Confidential" consistent with the text of the Stipulated Protective Order because it has a good faith belief that public disclosure of those documents will cause financial, competitive, or other serious harm to GEO. For example, GEO designated documents as "Confidential" when they contain the names and Alien Registration Numbers for federal detainees, as well as contracts with U.S. Immigration and Customs Enforcement or internal spreadsheets that identify GEO's sensitive pricing or staffing information that helped GEO to obtain those contracts. If such information were disclosed to the public, GEO will suffer serious business harm because its competitors could use the pricing, staffing, or other sensitive business information to unfairly compete against GEO and siphon away its business. *See, e.g., Seiter v. Yokohama Tire Corp.*, No. C08-5578 FDB, 2009 WL 2461000, at *2 (W.D. Wash. Aug. 10, 2009) (holding the defendant established good cause for protective order due to potential competitive harm from disclosure of pricing policies and other confidential business practices). In addition, GEO would suffer financial and potentially legal consequences if it disclosed personal information about the detainees in violation of The Privacy Act of 1974, 5 U.S.C. § 552a.

GEO reviewed the list of documents that Washington provided on May 7, 2019, and prepared the following chart identifying the basis for its confidentiality designations. Although GEO is amenable to Washington redacting all confidential information from the following

documents, GEO understands that Washington seeks to submit these documents as “exemplars” of certain financial information, so redaction is not possible.

No.	Bates number	Basis of Confidentiality
1.	Nickerson Amended Report	Business financial information, SPO ¶ 2(3).
2.	Brandt Rebuttal Disclosure and Report	Business financial information, SPO ¶ 2(3).
3.	GEO-State 006269-6270	Internal GEO information regarding audits or other competitive information, SPO ¶ 2(8).
4.	GEO-State 019281_Confidential.xls	Confidential staffing information, SPO ¶ 2(8).
5.	GEO-State 019286_Confidential.xls	Business financial information, SPO ¶ 2(3).
6.	GEO-State 022248_Confidential.xls ¹	Business financial information, SPO ¶ 2(3); confidential staffing information, SPO ¶ 2(8).
7.	GEO-State 027771-027803	Business financial information, SPO ¶ 2(3).
8.	GEO-State 046463	Business financial information, SPO ¶ 2(3).
9.	GEO-State 046573	Business financial information, SPO ¶ 2(3).
10.	GEO-State 048155-48161	Business financial information, SPO ¶ 2(3); confidential staffing information, SPO ¶ 2(8).
11.	GEO-State 048162	Business financial information, SPO ¶ 2(3).
12.	GEO-State 051048	Business financial information, SPO ¶ 2(3).
13.	GEO-State 051066-051074	Business financial information, SPO ¶ 2(3); personal detainee information, SPO ¶ 2(4).
14.	GEO-State 104409-104433	Personal detainee information, SPO ¶ 2(4).

¹ GEO clawed back two of these documents (GEO-State 022248 and GEO-State 048155) in accordance with the Court’s inadvertent disclosure order (Dkt. # 61), and therefore GEO also objects to Washington using those documents in violation of that order.

15.	GEO-State 229684_Confidential.xls	Business financial information, SPO ¶ 2(3); confidential staffing information, SPO ¶ 2(8).
16.	GEO-State 248406_Confidential.xls	Business financial information, SPO ¶ 2(3); confidential staffing information, SPO ¶ 2(8).
17.	GEO-State 249292_Confidential.xls	Business financial information, SPO ¶ 2(3); confidential staffing information, SPO ¶ 2(8).
18.	GEO-State 269508-269645	Business financial information, SPO ¶ 2(3); personal detainee information, SPO ¶ 2(4).

III. CERTIFICATION OF COUNSEL

The parties certify, pursuant to LCR 5(g)(3)(A), that counsel for Washington, Andrea Brenneke, and counsel for GEO, Shannon Armstrong, conferred on May 8, 2019 regarding the need to file these documents under seal. Washington shared a narrow list of exemplar GEO financial documents that it intended to file in its response to Defendant's Motion for Limited Protective Order Regarding Deposition of Ryan Kimble. Each of these documents have been designated as "confidential" pursuant to the Stipulated Protective Order, ECF No. 70. GEO reviewed the confidentiality designation of these documents and confirmed that they should, indeed, be marked "confidential" and be filed under seal, and Washington determined they were not amenable to redaction. The parties have jointly participated in the preparation and submission of this motion.

IV. CONCLUSION

The parties, by and through their counsel, stipulate and agree to entry of the Order, below.

Dated this 8th day of May, 2019.

Jointly submitted,

BOB FERGUSON
Attorney General of Washington

s/ Shannon Armstrong
J. Matthew Donohue, WSBA # 52455

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ORDER

The Court, having considered the representations and stipulations of counsel set forth above, and finding good cause, hereby GRANTS the Stipulated Joint Motion to Seal Documents and authorizes the filing of financial documents marked “confidential” to be filed under seal.

IT IS SO ORDERED

Dated this 13th day of May, 2019.



ROBERT J. BRYAN
United States District Judge